

1 Honorable Brian D. Lynch
2 Chapter 7
3 Location: Tacoma

4
5 UNITED STATES BANKRUPTCY COURT
6 WESTERN DISTRICT OF WASHINGTON

7 In re:

8 No. 19-41061

9 ROY MCKAGUE,

10 Debtor.

11 KATHRYN A. ELLIS, as Trustee for the
12 estate of Roy McKague,

13 Plaintiff,

14 Adv. No.

15 COMPLAINT TO RECOVER POST-
16 PETITION AVOIDABLE TRANSFER

17 vs.

18 KITSAP CREDIT UNION, a credit union
19 chartered and doing business in the State of
20 Washington,

21 Defendant.

22 COMES NOW the Plaintiff, Kathryn A. Ellis, duly appointed and acting Trustee in the
23 above referenced matter, by and through the undersigned attorney, and states and alleges as
24 follows:

25 **I. PARTIES AND JURISDICTION**

26 1. Plaintiff. Roy McKague filed a Chapter 7 Bankruptcy Petition on or about April
27 3, 2019. Kathryn A. Ellis is the duly appointed and acting Chapter 7 Trustee of such estate.

28 2. Defendant. The Defendant, Kitsap Credit Union, is a credit union chartered and
29 doing business in the State of Washington.

30 3. This adversary proceeding is one arising in the Chapter 7 case of the above named

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1 debtor now pending in this Court. This Court has jurisdiction over this adversary proceeding
2 pursuant to 28 U.S.C. §§ 157, 1334 and 11 U.S.C. §§ 549 and 550. This is a core proceeding
3 under 28 U.S.C. § 157 (b)(2)(A), (E), (H) and (O).

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5 II. FACTS

6 4. On or about March 4, 2019, Roy McKague, debtor herein, purchased a 2013
7 Honda Civic, VIN No. 19XFB2F80DE202668, from Toyota of Olympia, and financed by Kitsap
8 Credit Union, Defendant herein. The debtor was given possession of the vehicle on March 4,
9 2019 and the lien was not perfected until April 5, 2019, more than thirty days later and post-
10 petition.

11 5. The vehicle is property of the debtor's estate pursuant to 11 U.S.C. § 541 and has
12 not been abandoned by Plaintiff.

13 6. The recording of a lien against the vehicle on April 5, 2019 transferred a security
14 interest in the property to secure repayment of the sum of \$15,153.95 (hereinafter referred to as
15 "Transfer").

16 7. The Transfer of a security interest in the vehicle above referenced was not
17 authorized under this title or by this Court.

18 8. On or about May 9, 2019, Plaintiff made demand upon Defendant to return the
19 Transfer above referenced and Defendant has refused.

20 9. Defendant was the initial transferee of the Transfer or the entity for whose benefit
21 the Transfer was made, or is the immediate or mediate transferee of the initial transferee
22 receiving such or any Transfer.

23 10. Pursuant to 11 U.S.C. § 550 (a), Plaintiff is entitled to avoid the transfer of the

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28 KATHRYN A. ELLIS PLLC
5506 6th Ave S
Suite 207
Seattle, WA 98108
(206) 682-5002

**COMPLAINT TO RECOVER
POST-PETITION AVOIDABLE TRANSFER - 2**

security interest in the property above referenced from the debtor to Defendant.

11. Pursuant to 11 U.S.C. § 551, the Transfer avoided pursuant to 11 U.S.C. § 549 is preserved to the benefit of the estate.

WHEREFORE, the Plaintiff prays for judgment as follows:

a) For an order avoiding the unauthorized post-petition lien pursuant to 11 U.S.C. § 549 in the 2013 Honda Civic;

b) For judgment against Defendant in the amount of \$15,153.95;

c) For interest from the date of transfer, plus costs and reasonable attorney's fees;

and

d) For such further relief as the Court deems just in the premises.

DATED this 12th day of June, 2019.

/s/ Kathryn A. Ellis

Kathryn A. Ellis, WSBA #14333

Attorney for Plaintiff

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**COMPLAINT TO RECOVER
POST-PETITION AVOIDABLE TRANSFER - 3**